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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From:
US Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE
Washington, DC 20549-2736

Extension: Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-Based Swaps

SEC File No. S7-13-12, OMB Control No. 3235-0698

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in the Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 (“Exchange Act”) in Connection with Portfolio Margining of Swaps and Security-Based Swaps, Exchange Act Release No. 68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012) (“Order”). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

On December 14, 2012, the Commission found it necessary or appropriate in the public interest and consistent with the protection of investors to grant the conditional exemptions discussed in the Order. Among other things, the Order requires dually-registered broker-dealer and futures commission merchants (“BD/FCMs”) that elect to offer a program to commingle and portfolio margin customer positions in credit default swaps (“CDS”) in customer accounts maintained in accordance with Section 4d(f) of the Commodity Exchange Act (“CEA”) and rules thereunder, to obtain certain agreements and opinions from its customers regarding the

applicable regulatory regime, and to make certain disclosures to its customers before receiving any money, securities, or property of a customer to margin, guarantee, or secure positions consisting of cleared CDS, which include both swaps and security-based swaps, under a program to commingle and portfolio margin CDS. The Order also requires BD/FCMs that elect to offer a program to commingle and portfolio margin CDS positions in customer accounts maintained in accordance with Section 4d(f) of the CEA and rules thereunder, to maintain minimum margin levels using a margin methodology approved by the Commission or the Commission staff.

When it adopted the Order, the Commission discussed the burden hours and costs associated with complying with certain provisions of the Order that contain “collection of information requirements” within the meaning of the PRA.¹ The collection of information requirements are designed, among other things, to provide appropriate agreements, disclosures, and opinions to BD/FCM customers to clarify key aspects of the regulatory framework that will govern their participation in a program to commingle and portfolio margin CDS positions and to ensure that appropriate levels of margin are collected. Because the Order is still in effect, the Commission believes it is prudent to extend this collection of information.

The Commission estimates that 45 firms may seek to avail themselves of the conditional exemptive relief provided by the Order and therefore would be subject to the information collection.² The Commission estimates that each of the 45 firms that may seek to avail themselves of the conditional exemptive relief provided by the Order would spend a total of 3,430 burden hours to comply with the existing collection of information, calculated as follows: (20 hours to develop a subordination agreement for each non-affiliate cleared credit default swap

¹ See Order, 77 FR at 75221-23.

² The Commission bases this estimate on the total number of entities that are dually registered as broker-dealers and futures commission merchants. See Financial Data for FCMs as of July 31, 2015, Commodity Futures Trading Commission, available at <http://www.cftc.gov/MarketReports/FinancialDataforFCMs/index.htm>.

customers in accordance with paragraph IV(b)(1)(ii) of the Order) x (109 non-affiliate credit default swap customers³) + ((20 hours to develop a subordination agreement for each affiliate cleared credit default swap customers in accordance with paragraph IV(b)(2)(ii) of the Order) + (2 hours developing and reviewing the opinion required by paragraph IV(b)(2)(iii) of the Order)) x (11 affiliate credit default swap customers) + (1,000 hours to seek the Commission's approval of margin methodologies under paragraph IV(b)(3) of the Order) + (8 hours to disclose information to customers under paragraph IV(b)(6) of the Order) = 3,430 burden hours, or approximately 154,350 burden hours in the aggregate, calculated as follows: (3,430 burden hours per firm) x (45 firms) = 154,350 burden hours. Amortized over three years, the annualized burden hours would be 1,143 hours per firm, or a total of 51,450 for all 45 firms.

The Commission further estimates that each respondent will incur a one-time cost of \$8,000 in outside legal cost expenses per firm, calculated as follows: (200 hours to obtain opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order) x (\$400 per hour for outside legal counsel) = \$8,000, for an aggregate burden of \$360,000, calculated as follows: (\$8,000 in external legal costs per firm) x (45 firms) = \$360,000. Amortized over three years, the annualized capital external cost would be \$2,667 per firm, or a total of \$120,000 for all 45 firms.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the

³ Based on information that the Commission receives on a monthly basis, as well as current projections regarding the estimated increase in the number of customers per respondent, the Commission anticipates an average number of credit default swap customers to be 120 per respondent, 109 of which would be non-affiliates and 11 of which would be affiliates. The Commission notes that these estimates are based on current data and the current regulatory framework.

burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: January 25, 2016

Robert W. Errett
Deputy Secretary